

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0381

Sales and Use Taxes

For Calendar Years 1995, 1996, and 1997

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ISSUE(S)

I. **Sales/Use Tax** – JD955 Tractor and Mower attachment

Authority: IC 6-2.5-5-2; IC 6-2.5-5-3; *Indiana Department of State Revenue v. Cave Stone, Inc.* 457 N.E.2d 520 (Ind. 1983); 45 IAC 2.2-5-6; *Indiana Department of State Revenue v. American Dairy of Evansville, Inc.* 338 N.E.2d 698 (Ind. App. 1975); IC 6-2.5-5-1; 45 IAC 2.2-5-13

Taxpayer protests the tax on its mower used to mow between trees.

STATEMENT OF FACTS

Taxpayer is a nursery and landscape architectural designer. Taxpayer raises trees and shrubs from saplings and seed and purchases plants and blooming flowers that are used in a landscape setting. In addition, taxpayer sells black dirt, wood chips, installs landscape timbers, does tile repair, tree trimming, fence row cleaning, and removes debris. At audit it was determined that the taxpayer failed to maintain most of its records. A projection method was utilized for the sales and expenses.

The item at issue is a JD 955 tractor upon which the taxpayer claimed ninety-one percent (91%) exempt use. Upon audit, it was determined that the taxpayer used the tractor and accessories twenty-five percent (25%) for mowing and other non-exempt uses.

In lieu of an actual hearing, Taxpayer provided letters from horticulture and agricultural experts that state that the weed and cover crop rows are mown so that plants do not spread and compete with tree growth and the mowing helps protect the environment and provide easier access to the trees. Having a mow strip between the rows provides solid ground so that equipment such as tree diggers and sprayers can be used in less than perfect soil conditions.

I. **Sales/Use Tax** – JD955 Tractor and Mower attachment

DISCUSSION

At issue is whether a tractor and accessories purchased by the taxpayer used in clearing areas between trees is exempt from sales and use tax. The taxpayer argues that the tractor and its attachment should be exempt because it is essential and integral to the production process.

Concerning the sales tax exemption for agricultural machinery, tools and equipment, IC 6-2.5-5-2 provides as follows:

(a) Transactions involving agricultural machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for his direct use in the direct production, extraction, harvesting, or processing of agricultural commodities.

(b) Transactions involving agricultural machinery or equipment are exempt from the state gross retail tax if:

- 1) the person acquiring the property acquires it for use in conjunction with the production of food or commodities for sale;
- 2) the person acquiring the property is occupationally engaged in the production of good for commodities which he sells for human or animal consumption or uses for further food or commodity production; and
- 3) the machinery or equipment is designed for use in gathering, moving, or

This exemption is analogous to the exemption for manufacturing machinery, tools, and equipment, and the language in the agricultural statute (IC 6-2.5-5-2) is virtually identical to that in the manufacturing statute (IC 6-2.5-5-3). While there is no reported case law interpreting the agricultural machinery exemption, there is significant case law interpreting the manufacturing machinery exemption.

One such case is *Department of State Revenue v. Cave Stone, Inc.*, 457 N.E.2d 520 (Ind 1983). In Cave Stone, the Indiana Supreme Court held that inasmuch as the finished product could be produced only if it was transported from one production step to another, the transportation equipment was “directly used” by the purchaser in the “direct product” of the total production and was exempt from sales tax. *Id.*, at 525. Thus a key point is whether the equipment is “an integral part of manufacturing and operates directly on the product during production.” *Id.*, at 525 (quoting *Department of State Revenue v. U.S. Steel*, 425 N.E.2d 659, 662 (Ind. App.1981).

Furthermore the meaning of “direct production” has been strictly construed. The Cave Stone court case provided that the test for directness requires the equipment to have an immediate link with the product being produced, and that “the legislature plainly intended to limit the exemption to those items directly a part of production.” 457 N.E.2d 520, 525 (quoting *U.S. Steel*, 425

N.E.2d 659, 662).

Additionally, 45 IAC 2.2-5-6 establishes an exemption for agricultural machinery that is used in the direct production of agricultural commodities. State sales tax does not apply to sales of agricultural machinery, tools, and equipment to be directly used by the purchaser in the direct production, extraction, harvesting or processing of agricultural commodities. 45 IAC 2.2-5-6-(b).

45 IAC 2.2-5-13 (b) states in part that “purchases of materials to be directly consumed by the purchaser in the business of producing tangible personal property are exempt from tax provided that such materials are directly used in the production process; i.e., they have an immediate effect upon the commodities being produced. Property has an immediate effect on the commodities being produced if it is an essential and integral part of an integrated process which produces tangible personal property.”

Taxpayer was already exempted from seventy-five percent (75%) of the tractor and accessories' use tax. Taxpayer has not provided proof that the twenty-five percent (25%) assessed on the price of the tractor and accessories are exempt. The two letters provided by taxpayer merely confirm that the tractor and accessories' use is to maintain the ground around which the trees are being grown. No exemption exists for the maintenance of grounds.

FINDING

Taxpayer's protest is denied.